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Subject: Draft Calfed Environmental Water Account, Programmatic Environmental Impact Report / Environmental Impact Statement (EWA EIS/EIR), State Clearinghouse Number 1996032083

September 15, 2003

Dear Ms. Cervantes and Ms Brown:

The Regional Council of Rural Counties (RCRC), an organization representing 29 of California's 58 counties, through this letter, offers comments on the above referenced document. We respectfully request that the anticipated Final EWA EIS/EIR will respond to these comments in a clear, straightforward and direct manner. It is our objective that the resulting Administrative Record for the proposal will comply with the California Environmental Quality Act and provide decision makers and the general public with a clear understanding of the consequences of the project. We have provided broad subject discussions below and then follow with more detailed comments on the draft document.

Statement of statutory responsibilities and interests -

RCRC's member counties are the land management agencies responsible for development and implementation of comprehensive land use and resource plans as required by state law. In addition, these counties have the authority, and many have passed ordinances to protect and regulate, groundwater and/or surface water resources. Each of the Counties is also the entity charged with implementing the California Environmental Quality Act as a Lead Agency on a broad diversity of projects. Specifically, where there will be local entitlements required to implement the EWA, RCRC member counties reserve the right to condition any such entitlement and make reasonable protections a part of their authority as provided under CEQA (CEQA Guidelines Section 15040 and 15041). Further, notwithstanding the content and findings of the subject analysis of the EWA EIS/EIR, counties reserve the right to conduct analysis necessary for local entitlements and if necessary to disapprove those local entitlements (CEQA Guidelines Section 15042).

EWA authority to operate, EWA project description and project formulation process unclear -

We wish to point out that the EWA project is a CALFED implementation action. The Record of Decision (8/28/00) in and of itself cannot create the authority to carry out the CALFED Program. Indeed, the Record of Decision (ROD) states, *"The commitments of the United States and of the State of California under this ROD are necessarily contingent upon the availability of appropriate funds or upon enactment of authorizing legislation..."*¹

There is no authorization for the CALFED Program at the federal level. Therefore, under what specific federal authority is the EWA Project being carried out? We asked this question in our letter which constituted our formal Response to Revised Notice of Preparation for CALFED EWA. That question was not responded to in the current Draft EIS/EIR. We ask, again, that this important question be formally answered in the Administrative Record.

This question is especially salient as per the ROD, *"California taxpayers, stakeholders and the Federal Government will be called upon to invest billions of dollars over the next decade on CALFED programs. Expenditure of those funds must be based upon accountability and measurable progress being made on all elements of the Program."*² The CALFED Program was intended to be implemented in whole and not piecemeal. The EWA, as a portion of the ROD, should be authorized and implemented as part of a greater whole, not selectively implemented in a manner that would be unbalanced.

¹ CALFED Bay-Delta Program, Programmatic Record of Decision, 8/28/2000, pg. 4.

² IBID

“All aspects of the CALFED Program are interrelated and interdependent. Ecosystem Restoration is dependent upon water supply and conservation. Water supply depends upon water use efficiency and consistency in regulation. Water quality depends upon improved conveyance, levee stability and healthy watersheds. The success of all the elements depends upon expanded and more strategically managed storage.”³

These very issues were underscored by the Legislative Analyst’s Office (LAO) Report of 1/29/01 regarding the Environmental Water Account as follows:

“The EWA is a new concept, and a number of important policy and operational issues remain unresolved. We think that it is premature to establish the program until these issues are resolved:

- *The costs and benefits of the EWA, and the program’s impacts on the water transfer market and groundwater resources.*
- *The appropriate state role in EWA, particularly in terms of funding.*
- *Operational issues including governance, acquisition and use of water by EWA and scientific review.*
- *How to facilitate the water transfers and provide the storage capacity necessary for EWA to work well.*
- *How to hold the program accountable to the legislature.”⁴*

The LAO’s report went on to recommend (in part), *“...we recommend that legislation be enacted to create the program and to specify how the program will be governed, funded, operated and held accountable. Funding should be governed by the ‘beneficiary pays’ principle...”⁵*

We wish to underscore that public funds are being used to essentially purchase a public asset (water) through negotiations between state and federal agencies and those who would benefit from the implementation of the program through both selling and buying water. We urge that the document clearly explain how decisions on acquisition of EWA assets are made, who makes them, where the funds come from to pay for them and who the beneficiaries are in the various transactions.

This issue was also raised in the report by the LAO’s office:

³ IBID

⁴ Environmental Water Account, Need for Legislative Definition and Oversight, Legislative Analyst’s Office, 1/29/01, page 1.

⁵ Environmental Water Account, Need for Legislative Definition and Oversight, Legislative Analyst’s Office, 1/29/01, page 2.

“The CALFED appears to have conflicting views about how EWA should be funded. On one hand, CALFED has adopted ‘the beneficiary pays’ as the grounding principle to fund its programs overall. (In other words, those who benefit from a program should pay for the program.) On the other hand, the five fishery and water agencies set to administer EWA have agreed that the account’s operation will not result in an increase in costs to parties contracting for SWP and CVP water. This is so even though these contracting parties would benefit from EWA’s making water deliveries more certain...EWA helps water project operators meet their regulatory responsibilities under endangered species laws.”⁶

“The stakes in buying and selling water in markets with public money requires accountability which goes far beyond the bottom line. The public must know how and why particular choices were made...The bottom line is, however that management agencies must be held accountable for how they use the flexibility that the EWA provides.”⁷

All of these details are part of the required project description for CEQA. The ROD identifies Governance as a component of the CALFED Program.⁸

The issue of how these decisions are made is important in relationship to the specific incorporation of action-by-action implementation of mitigation measures associated with EWA water acquisitions, including those impacts often referred to as third party impacts.

To underscore the importance of this matter, we refer you to the very point as to the size and scope of the EWA itself - that is the Project Description and that of the alternatives. The so-called “Fixed Purchase Alternative”⁹ is in fact the description of the EWA program from the Calfed Record of Decision. That proposal was to limit upstream of delta acquisitions to just 35,000 acre feet and total acquisitions to 185,000 acre feet.

⁶ Environmental Water Account, Need for Legislative Definition and Oversight, Legislative Analyst’s Office, 1/29/01, page 9.

⁷ First Annual Review of the Environmental Water Account for the CALFED Bay-Delta Program, EWA Review Panel, Page 23.

⁸ CALFED Bay-Delta Program, Programmatic Record of Decision, 8/28/2000, pg. 3.

⁹ EWA, EIS/EIR, page ES-9, July 2003

However, the EWA project proposal of acquiring up to 600,000 acre feet, with no limitation on upstream acquisitions represents what is euphemistically referred to as “...a flexible interpretation of the CALFED ROD and Operating Principles Agreement...”¹⁰

It is not clear to the reader under what specific authority the agencies used such broad, chimerical powers to reinvent the Record of Decision. This point is not inconsequential in light of the numerous other areas of the ROD in which much latitude now exists for agencies to convene in a nonpublic forum and then to flexibly interpret the ROD.

Further, the agencies are also bound by another portion of the ROD. We refer you to the CALFED solution principle that CALFED will, “...Have no Significant Redirected Impacts. Solutions will not solve problems in the Bay-Delta system by redirecting significant negative impacts, when viewed in their entirety, within the Bay-Delta or to other regions of California.”¹¹

The increased water transfers, which would be required by the EWA will, in many cases, come from water sources within RCRC member Counties. Some of those Counties, as well as other upstream Counties, should reasonably be expected to make claim under the Area of Origin Statutes for additional water supplies for their local area. The water necessary for the Area of Origin needs could be the same water sources used for increased transfer water out of the north state in the EWA scheme. Therefore, the competition for the same water resources, could result in a conflict with the objectives and intentions of upstream Area of Origin requirements to sustain their economies and environments. Many of the RCRC member Counties are agriculturally based and rural in nature. They are also areas that have been generally identified as areas from which the EWA, the CALFED Ecosystem Restoration Program (ERP), the Governor’s Drought Water Bank, and the Central Valley Project Improvement Act will seek to additional acquire water resources.

Further, it is our understanding that the Environmental Water Account represents what is only a portion of a much larger water acquisition effort underway statewide. Many of these efforts are common knowledge and must be addressed within the context of the EWA EIS/EIR. The cumulative impacts of the total Calfed Program, and not just each element must be addressed in this document CEQA Guidelines sec. 15355, 15065(c) and 15130. Furthermore, a full range of alternatives for these actions (both in this proposal and in the EWA as referenced) must be evaluated within that cumulative framework CEQA Guidelines sec. 15126.6.

¹⁰ EWA, EIS/EIR page ES-8, July 2003

¹¹ CALFED Bay-Delta Program, Programmatic Record of Decision, 8/28/2000, pg. 9.

Additionally, the program must be developed and implemented in total - that is not fragmented into portions - and implemented piecemeal. We therefore refer you to our comments of 6/17/02 directed with regards to the Environmental Water Account Project (SCH #1996032083) proposal and the anticipated (and now we believe, cumulative) impacts resulting from that action upon the RCRC membership area. The cumulative impacts of the total Calfed Program, and not just each element must be addressed in this document CEQA Guidelines sec. 15355, 15065(c) and 15130. Furthermore, a full range of alternatives for these actions (both in this proposal and in the EWA as referenced) must be evaluated within that cumulative framework CEQA Guidelines sec. 15126.6.

For the reasons described above, RCRC's members are not only interested parties in these proceedings due to their statutory authority and responsibilities under California law, but also because their environments, citizens and economic viability may be adversely affected by the proposed project.

Duration of program and impacts is unclear -

The EWA, as stated in the subject report is to be implemented over four years. However, the EWA provides that *"Because there is a possibility for extension, this EIS/EIR analyzes EWA actions that will start at the time of the signing of the EWA ROD through 2007."*

Under what specific authority and what process would be used to extend the ROD? This is important in terms of the potential for phasing of the project and speaks to the heart of the matter as to duration of impacts. The EWA was intended to be just a four-year program as defined by the ROD. The agencies, absent a legislative and congressional authorization, do not have the authority to unilaterally extend one segment of the greater federally unauthorized CALFED Program. Therefore, if the project description includes the provision for this extension the analysis should clearly explain the details of that process.

Local, discretionary permits will be necessary-

Following the completion of the subject environmental review, it is reasonable to assume the EWA could be implemented (presuming funding and authority exists). Under that scenario, additional discretionary permits would be necessary from those counties which have authority to regulate ground water resources (including ground water substitution for surface water transfers) and conduct site specific CEQA analysis. Additionally, the actual water sellers, also local agencies, will be imposing potential conditions and mitigation measures on proposals for transfer. There is no guarantee that the party wishing to transfer the water will be granted entitlements from all required local agencies. That is, a described EWA transfer action may not take place due

to local permit denial. Additionally, local CEQA analysis, more detailed than the EWA document, may discover environmental consequences which cannot be mitigated successfully and for which the local decision making entity is unwilling to make a finding of overriding socio/economic considerations. Thus, EWA actions anticipated in this analysis may not come to pass due to local permit processes.

Operational changes unclear -

If identified transfer sources are unavailable due to local permit denial what is the management response for the EWA project proponents? Will the total amount of water resources remain the same but the amount increase in identified areas? Will the total amount of water be commensurately reduced? Will other source areas, not identified in the EWA document be proposed and if so how will those be dealt with in the CEQA process?

Potential impacts on future upstream water supplies -

The EWA operation and analysis in the environmental document is primarily focused on water acquisitions. We believe that CEQA requires a full and complete disclosure of the complete project for an adequate analysis. CALFED currently is proposing to develop (subject to further evaluation) both north and south of Delta surface storage. What amounts of that total new storage will be required by the EWA?

“As new water projects are built, the appropriate amounts of Tier 2 and Tier 3 water are likely to increase. Where possible the additional EWA water should be built into the cost of the new projects and thus borne by the beneficiaries of the new projects.”¹²

It is critical to know what CALFED, or other storage projects, are anticipated to have to commit water resources to the EWA. That information should be incorporated into this analysis in a cumulative assessment. While we recognize that new storage facilities would not likely come on line within 4 years it is also uncertain that the EWA will terminate in 4 years. Therefore, the very real possibility exists that the EWA could be extended and that this question is salient. Indeed, is the extension of the EWA predicated upon access to new storage? If so how much and who would pay? Is that access limited to only CALFED storage projects or are all existing or new storage projects potential EWA facilities?

¹² First Annual Review of the Environmental Water Account for the CALFED Bay-Delta Program, EWA Review Panel, Page 20 & 21.

In addition, we believe it is worth noting that as the earlier findings of the LAO's office affirmed, that those who presently benefit from the EWA (water exporters) do not pay for benefits received. CALFED anticipates that new storage (even non-CALFED storage) would require users to pay for EWA actions. It is evident that the methodology for determining which water users must pay for EWA benefits and which parties must subsidize those benefits should see the light of day in this analysis. It cannot be left to the EWA agencies to determine, at some later date, how the benefits will be paid for and by whom. Please clarify.

- 1□ **Alternative Selected for Preferred Project Alternative Impacts upstream areas-**
- 2□ We urge the authors to closely examine the actual benefits of the project objectives and to evaluate that against other alternatives including the Fixed Purchase Alternative and the No Project Alternative. We believe that either of these two alternatives would provide equal benefits (in terms of stated project objectives) with fewer redirected impacts to the upstream communities, environments and local governments. We will provide detailed comments illustrating this point in our following detailed comments.

Thank you for the opportunity to provide these comments and we look forward to reviewing the final environmental document which hopefully contains a more acceptable project proposal to the Regional Council of Rural Counties membership.

Sincerely,

John S. Mills

These comments are provided on a page by page basis referenced to the EWA EIS/EIR. Due to the nature of the subject document and its organization duplication that occurs within these comments mirrors the duplication that exists in the draft document itself.

Volume 1 -

Page ES-3, It is unclear if the EWA acquisitions for water are somewhat mitigated in their potential impacts to upstream users by the application of the Area of Origin statutes. For example, do EWA acquisitions and any resulting water rights amendments before the State Water Resources Control Board open those EWA assets to Area of Origin claims. It appears that the assets being acquired are simply a substitution of State Water Project resources which are implicitly subject to Area of Origin claims. To the extent that these assets are being acquired to, essentially, replace those water resources it should be clarified if the EWA assets are subject to such claims.

Page ES-4, The EWA is proposed for an initial period of 4 years with the suggestion that it may be extended (criteria and decision process uncertain). This, at least potentially, impacts the viability of alternatives that were summarily rejected by the proponents as not being able to be available due to time constraints. Please explain if these alternatives will be examined in future, perhaps as they begin to “phase in” as viable alternatives to an extension of the EWA.

Page ES-9, It is unclear what relationship the proposed actions of the “EWA agencies” , that is the project proponents, bear to those of local regulatory agencies. *“The EWA Agencies would employ conservation and mitigation measures, as described in this EIS/EIR, to minimize effects of this alternative.”*¹³ As the project proponent (applicant) the EWA agencies proposed mitigation measures are not the only mitigation measures that may be imposed on the subsequent actions. It is reasonable to foresee additional mitigation measures being imposed by local agencies as well.

Page ES-10, The proposed acquisition of 600,000 acre feet of water, potentially from upstream areas, appears to only be limited by the Delta pumping capacity. Could you clarify if the additional asset acquisitions now proposed for the EWA are the trigger, or the response to the proposed increase in pumping as part of the CALFED Bay-Delta Program’s north and south Delta improvements?

¹³ EWA, EIS/EIR Volume 1, page ES-9, July 2003

If the acquisitions are indeed a requirement of increase pumping (or if they are substantially linked) why is this document being circulated independent of the South Delta Improvements Project environmental analysis? It is our understanding of the CALFED Program that increased pumping from the Delta is a companion action to the EWA due to the Biological Opinion? The initial finding that the CALFED South Delta Improvements Project (SDIP) may have significant environmental impacts (EIR/EIS is now in preparation) and that this document finds the same for the EWA seems to point to the need to incorporate the review of these two projects into one comprehensive environmental analysis (see CEQA Guidelines Section 15130(a) and (b)).

This then plays into the conundrum of which drives which. If the EWA acquisition strategy is only constrained by Delta pumping this seems to imply a rather myopic view of the water system. That is, the EWA is only focused on export constraints as a management criteria. Does this then mean that when/if Delta exports increase to 10,300 cfs that EWA acquisitions will increase even more? Please clarify the relationship between these two discretionary projects under one CALFED Program. Also please explain the relationship and limitations of the EWA and SDIP CEQA analysis.

Page ES-13, The major conclusions and findings section states in part, *"...and there will be no uncompensated water costs to Project water users."* Does this reference mean to imply that Project water users who are upstream are not protected? For example, under conditions where upstream project reservoirs are releasing water for environmental (perhaps fisheries) needs are those upstream project water users provided with any commensurate assurance of uncompensated losses? We suggest that there should be no uncompensated water costs to Project water users regardless of geographic location.

Page ES-14, The subject of surface water supply and management contains the following paragraph which is very important but unclear.

"Willing sellers participating in crop idling would reduce consumptive use of the water. Farmers and other water users not participating in the EWA could receive less water because of reduced tail water supplies. The willing seller of water from crop idling would maintain return flows in their system to a level that would not harm downstream users."

We wish to know just how much that water would be? Clearly, if this water is in addition to the other water acquired by the EWA then the total amount of acquisitions and mitigation would be potentially significantly higher than the numbers described in the report. For example, would an EWA acquisition of 10,000 acre feet in this category require an additional 5 acre feet or 5,000 acre feet to "...not harm downstream users."? Please clarify and quantify.

This same point is relevant to water quality on the same page which attributes EWA carriage water with meeting Delta water quality requirements. Is this total amount of

water included within or in addition to total EWA acquisitions? Please clarify and quantify.

Page ES 16, What does the following sentence mean? *“To prevent cumulative effects, EWA agencies would consider other reasonable and foreseeable crop idling transfers before idling up to 20 percent of the county crop acreage.”* What is the significance of the 20% fallowing amount. Further, what does that imply regarding type of crops fallowed either singly or cumulatively? As an example, if north of Delta fallowing is limited to rice fields what impact will that have on water fowl who obtain 40% of their feed from managed wetlands (rice fields)? Please clarify.

Page ES-17, top of page, is the range of alternatives for transfers permanent and 1 year only? Are multiyear, less than permanent acquisitions also an alternative?

Page ES-17, Power Production and use. It is expected that there will be increased pumping within the Delta by state and federal projects related to the EWA. Furthermore, some upstream generation by CVP facilities may be foregone. The Counties of Trinity, Calaveras and Tuolumne are all reclamation first preference power customers. What specific assurances does the Bureau provide in this project to assure these first preference power customers that they will not suffer either reduced power availability or increases in power costs as a result of the proposed action?

Page ES-19, Table ES-3. This table contains no examination of the potential impacts to upstream water supply reliability of non-project users. Why was no such analysis provided?

Page ES-25, Table ES-4. This table indicates that there will be water used from crop idling and groundwater substitution. Further there will be necessary additional water to maintain flows to downstream users. This would seem to indicate that the actual level of groundwater pumping will be greater than the amount needed simply for EWA use? Please clarify.

For the purposes of the proposed water transfer(s) are the project proponents declaring this a surface water transfer or a ground water transfer? This is of particular concern due to the Department of Water Resources previously claiming that the same water was simultaneously ground and surface water as a method to avoid State Water Resources Control Board authority and the application of Water Code Section 1220.¹⁴

Page ES-28, Table ES-5. This table does not contain a statement regarding the potential impacts of the transfers to the local county governments as social service providers

¹⁴“The Role of Laws and Institutions in California’s 1991 Water Bank”, Brian E. Gray, 1994.

which will be responsible for dealing with resulting 3rd party impacts to laborers. Please provide.

Page 1-1, please note that the CALFED ROD, speaking on the point of extending the Environmental Water Account beyond four years, expected there to be an authorized federal participation. To date there is no such expressed federal authorization. We would ask that you clarify, absent a Congressional authorization for CALFED, what specific authority the federal agencies would use to extend the EWA - which is a component of CALFED.

Page 1-8, The first paragraph refers to “...an effective statewide water management program...to reduce water use conflicts.” Please note that the CALFED Program is not a statewide water program. CALFED does not include many areas of the state which are located outside the CALFED Solution Area. Please correct.

Page 1-28, Section 1.5.3.3.1. Please note that “short term” transfers which may be exempt from CEQA may still have to undergo discretionary entitlement permitting if they include groundwater substitution. County ordinances regulating transfers of groundwater, or groundwater substitution for surface water transfers, may trigger a local CEQA process (see Section 1.5.3.4 Source of Water for Transfers).

Page 1-39, Section 1.8.1. Please note that where local governments have discretionary authority to regulate water resources there may be additional environmental analysis required on a site specific basis. This is especially important due to the fact that the EWA agencies are not completely sure where, exactly, all transfers would take place from or the amounts of the transfers. The level of analysis in this report is not adequate to “cover” all specific transfers given that unspecific level of analysis.

Furthermore, to the extent the transfers were to involve any physical modification to lands, these may fall under the jurisdiction of the local land use planning agency. This comment also applies to the intent of the EWA agencies to use this document for individual actions (See Section 1.10).

Page 1-41, first paragraph. Please note that where the selling agency is a local water district (groundwater substitution) the actual authority to regulate groundwater rests with the County and not the agency. In that situation the County, as Lead Agency, will exercise sole and independent judgment as to whether the EWA EIS/EIR is adequate for the purposes of compliance with CEQA (CEQA Guidelines Section 15040 and 15041).

Page 2-4, development of alternatives. Did the EWA Agencies seek the advice of any advisory body or group in the development of the proposed project? While working to “...interpret the ROD...” did those agencies seek the advice or input of individual

stakeholders, local agencies, elected officials or potential beneficiaries of the EWA? Please clarify if meetings to develop the alternative were advertised and open to the general public. This goes to the epicenter of the matter of development of the proposed project and implicitly the rejection of alternative methods to achieve project objectives.

Page 2-5, we wish to reiterate our point that should the EWA extend longer than four years, many rejected alternatives may in fact be more feasible and could at a minimum displace some of the water needed in Delta export areas. Will this aspect of the EWA alternatives selection be revisited if the program is extended?

Page 2-7, reference is made to the Colorado River supplies. We urge the authors to closely follow the activity in this arena as it may result in additional water supplies to the Delta export areas and could displace some of the water proposed to be exported from the Delta. That in turn could reduce EWA size and scope.

Page 2-11 final paragraph. Please note that if the anticipated “average” purchase of EWA water under the ROD was 185,000 acre feet there would by necessity be years in which the actual purchases were significantly less. Especially given the reports assertion that “...higher amounts were anticipated in subsequent years.” The authors can’t have it both ways in terms of average. Please clarify and provide specific reference to the ROD and the CALFED Administrative Record of the Programmatic EIS/EIR.

Page 2-15, item #2). This paragraph is confusing. Please redraft so that it is understandable.

Page 2-16, item 2.2.2.4. This section alleges that both alternatives are based upon the CALFED ROD. We take exception to that claim. A careful reading of the ROD makes no mention of the very ambitious EWA program as described in this document. Indeed, a reasonable person may argue that to reach the amounts being proposed a more prudent path would have been to formally amend the ROD. Please specifically document where in the ROD the propose project alternative is described.

Page 2-27, section 2.4. The following sentence gives us grave concern in the larger context of the selection of project alternatives. “*Any alternative has to be able to to allow the EWA agencies to use water for a broader range of fish actions than envisioned in the CALFED ROD.*” This flat assertion that the ROD is flawed then raises the question of why, during the Project Alternatives selection process, wasn’t it recognized by the agencies that the ROD should be amended to reflect their best recommendation and why wasn’t an amendment to the ROD included within the project description?

Page 2-25/2-26, Sections 2.3.2.1.1 - 2.3.2.2. There appear to be viable short term (less than four years) alternatives to the EWA which are described as local water user actions in these sections. It appears that a combination of accepted shortages (to some level)

combined with accelerated permitting for desalination plants, water use efficiency investments and more active ground water management in the export areas offer a less environmentally damaging and less expensive method to achieve the objectives of the proposed project. The range of project alternatives analysis does not do justice in applying the rule of reason implicit in CEQA alternatives selection and comparison. First the alternative should reduce environmental consequences, second it should achieve the objectives of the project (this is not necessarily the proposed project, see CEQA Guidelines Section 15124(b) and 40 C.F.R Section 1508.20). The requirement under the National Environmental Policy Act for a rigorous evaluation of alternatives and detailed comparison of those alternatives is lacking in this document. We do not believe the record shows a complete and thorough examination - in the record - of what could be achieved in meeting all or part of the EWA objectives, by implementing aggressive local water management actions as outlined in the above referenced sections. Absent this detailed level of analysis the draft document is inadequate in terms of both NEPA and CEQA. Please correct.

We suggest a new draft be prepared with the necessary comparison of alternatives in detail that the reader may render an informed judgment on the consequences of selecting one alternative over another, or in the development of a yet to be described modified (scaled down) EWA, when combined with local water management actions and managed shortages for the short-term.

We are concerned that the focus of the draft document is simply to avoid having the export interests pay for water to make up for water not received by the projects. *"...the Joint Point of Diversion could provide additional capacity to pump water into the Export Service Area, but the Projects would need to provide the water to be pumped."*¹⁵

Page 2-28, third paragraph. We wish to point out that there may also be regulatory hurdles and processes that limit the attractiveness of ground water storage as described in this section. That may result in the EWA not being able to obtain storage access necessary. In that eventuality what is the proposed management response?

Page 2-31, section 2.4.1.1.3. It is unclear why the State Water Project (SWP) could not obtain (from willing sellers at market prices) water to participate in the Vernalis Adaptive Management Plan, unless we assume a subsidy of SWP users in an objective of the proposed project. Please explain why the EWA would be able to purchase water but the SWP couldn't. The record of the 1991 Governor's Drought Water Bank showed that the DWR could be very creative in obtaining water for transfer and avoiding the usual legal review processes present in SWRCB authority.

¹⁵ EWA, EIS/EIR, Section 2.3.2.1.1, page 2-26, July 2003

Page 2-33, paragraph 1. It is not clear if the paragraph is attempting to make the point that the EWA is an “interim” project for acquiring in stream flows that could be “rolled over” at some point and called the EWP. Please clarify that the EWP would need to go through its own environmental review process. If this document, however, is intended to address the long-term impacts of the EWP where that is done should be clarified.

Page 2-33, Section 2.4.1.4. Are the additional “...actions to augment Delta outflow in addition to outflows required by the SWRCB’s Decision 1641 and existing baseline...fishery protection” more water than the maximum 600,00 or does this imply higher annual acquisitions to accomplish this objective, or is the amount of water just what is described for the EWA?

Page 2-36, paragraph 2. The paragraph asserts that additional environmental review for EWA transfers that meet certain environmental tests and mitigation as described in the subject document is not necessary. The proposed mitigation measures in this document are in many cases “punted” to the local seller and county for mitigation. Further, the nature of the location and amounts of the transfers are generally defined but not to the level necessary to actually determine and mitigate for local source area impacts. Thus, the local permitting and regulating agencies and the county (in the case of groundwater resources) would be the lead agencies and they reserve the right to make the determination based on the details of the actual application before them (see CEQA Guidelines Section 15064(a)(b)(c)(d)).

Page 2 -38. Are carriage water totals included within the total amount of EWA transfers or in addition to the amount? For example is an acquisition of 10,000 acre feet from the Merced Irrigation District 10,000 acre feet or 11,000 acre feet, or perhaps another amount? Is there any plan by the EWA agencies to negotiate with downstream riparian users to assure that EWA water is actually moving through the system as intended? Please clarify.

Page 2-39, Section 2.4.2.1.1. It appears that the use by the EWA of stored reservoir water, subject to the refill conditions, could actually limit the ability of Areas of Origin to make claims for water rights due to reservoir reoperations. That is, upstream refill could be restricted making facilities unavailable for Area of Origin use. Please explain.

Page 2-43, paragraph 1. The determination regarding groundwater overdraft by the transferring agency is part of the truth. Also true is that most EWA transfers involving ground water substitutions will be subject to local county ground water regulatory authority, which is independent of the transferring agency’s determination. Please correct.

Page 2-47. This page discusses the role of crop idling as a water acquisition tool. What is not clear is whether the purpose of limiting the amount of fallowing to 20% in any

single county is to avoid local socio/economic impacts or to avoid the public hearing required under Water Code Section 1745(b). Please clarify.

Page 2-48, Section 2.4.2.1.4. The first paragraph of this section describes that EWA agencies “*may purchase...groundwater from the Sacramento Groundwater Authority...*”. The second paragraph states, “*The EWA Project Agencies would purchase water from the SGA..*” Are these two statements in conflict - that is may vs. would? Please clarify.

Page 2-53, paragraph 1. On the issue of whether the sales by SWP contractors outside their service area had adverse impacts on other SWP contractors we note the following. That analysis only examined the potential impacts to other SWP contractors. It did not examine what potential impacts could result on Area of Origin claims against existing SWP water. Please note in final document.

Page 2-64, Section 2.4.4.1. “*...potential supplies in the export service areas are decreasing...*”. Please amplify and give examples.

Page 2-65 footnote 35. It appears that the carriage water amount for the 35,000 acre feet would be in addition to the 35,000 acre feet. It is presumed that this then holds true for the EWA proposal for 600,000 acre feet (if all acquired upstream of the Delta). If correct it would be helpful if the document would account for the total amount being targeted for acquisition, including carriage water.

Page 2-66, Table 2-8. This table presumes the implementation of the CALFED ERP. As noted earlier there is no present federal authorization for carrying out the CALFED program. Under what specific authority and funding would the federal agencies carry out the ERP? Lacking either what is the implication for the EWA of a nonfunctional ERP? What if the ERP is implemented to a lower level than the amounts identified? Please provide detailed response.

Page 3-12, Section 3.5. The EWA is described as a 4 year time frame and only holding the potential for short term water supply reliability. We therefore conclude that earlier discussions regarding the EWA agencies seeking multiyear purchases would be for no longer than four years? Clarify.

Page 4-20, Section 4.2.2. Is the threshold for significance of any of these items to, say, .0001%? .001%? 1%? It is unclear how a change that is statistically insignificant (let’s say a .0001% decrease in water) could be found significant. Is this threshold (ie any change) consistent throughout the document or does it only apply to export water supplies?

Page 4-20, Section 4.2.2. How is the receipt of money by non-project and project water sellers a mitigation measure for water shortages? If this assumption is indeed valid wouldn’t it be potentially feasible to simply pay the exporters to take, for example, 20%

less water (scheduled to avoid fishery impacts) and thus reduce the amount of activity under EWA acquisitions? Please explain.

Page 4-22, Section 4.2.5.1. Does the amount of described flow include carriage water? If not what is the total amount?

Page 4-43, Section 4.2.8.1. Is this amount of water (drainage system flows) included in the total acquisition amount or in addition to it? Please clarify and quantify.

Page 4-44, Section 4.2.10. We disagree with your assertion that cumulative impacts would definitely be non-significant. Past experience (Governor's Drought Water Bank of 1991) has demonstrated that a presumption of management coordination and consideration for local "source" area impacts should not be assumed, but rather assured. Please rephrase to reflect that reality.

Page 6-1. We would like to offer a general comment on this section. Generally, the report assumes acquisitions will be mitigated by local management and regulatory actions. However, if the EWA were to continue for multiple years and local impacts were too significant, some acquisitions would likely be stopped. What would the replacement acquisition strategy be?

Page 6-45, Section 6.2.2. We do not understand why the significance criteria for this section is more lenient in its approach to impacts to the Section 4.2.2 levels of significance. It certainly looks as if the standard of significance is much lower for Section 6.2.2 than 4.2.2. Please explain the different standard and the justification.

For example, if local ground water levels dropped 1% (again using the Section 4.2.2 criteria) then a significant impact would occur. However, Section 6.2.2 seems to apply a less stringent standard for impacts.

The reader is left with the impression that impacts to export water users are considered a much higher concern to the authors than impacts to the areas transferring the water. Please explain this reasoning. Is there a different standard of analysis under this environmental document for export interests and source area interests?

Page 6-47, first paragraph. If the withdrawals of an area exceeded recharge in sequential EWA acquisition years those transfers could have a significant impact on local ground water levels and recharge ability. We question the assertion of the DWR Northern District and ask for their supporting data to be presented in the Administrative Record.

Page 6-51, final paragraph. The word "...address..." is a meaningless term in the context of CEQA analysis. The proper phrase is mitigate to a non-significant level, if that is what is meant. If not please clarify. As we stated in the beginning of our comment letter,

our objective is that the Administrative Record for the proposal will comply with the California Environmental Quality Act and provide decision makers and the general public with a clear understanding of the consequences of this proposal. Please use terms which are definitive and not ambiguous.

Page 6-52, fourth paragraph. The phrase “...however, the mitigation measures would reduce any potential effects to less than significant levels.” (in reference to groundwater quality) is misleading. The actual response is demonstrated on page 6-53 in which County ordinances are referred to which will “...address adverse effects...”. Again, the actual response under CEQA is mitigate, not address. Please refer to CEQA Guidelines Section 15126.4 with special attention to Section 1526.4(a)(2).

Page 6-59, second paragraph. The proposed ground water monitoring implies that the only impacts will occur within the two local agencies mentioned. At this time, there is at least a potential for the actual impacts to occur outside the boundaries of the referenced agencies. It is not clear if the two agencies would be actively monitoring ground water levels on lands outside their service area and if so how (specifically) they would identify and mitigate impacts. What authority would they use to operate and perhaps regulate outside their legal boundaries? Please clarify.

Page 6-61, second paragraph. We recommend that any groundwater mitigation measures stipulate that all sellers to the EWA Project Agencies in cooperation with the County(s) with jurisdiction, have a monitoring and mitigation program in place to identify and mitigate to a non-significant level potential land subsidence effects. Again, we urge that the authors understand the relationship of selling agencies involved in ground water substitution transfers and the County’s regulatory authority. Further, emphasize the need for definitive mitigation statements which provide clarity of purpose.

Page 6-71. It is not clear what the relationship between EWA Project Agencies and their Review Team and local agency and County authority is. It seems that mitigation is intended but the vague term “address” again confounds the reader as to the authors intent. This confusion is perpetuated on page 6-71 in reference to mitigation and the relationship of the local selling agency and the County regulating the ground water. Please clarify.

Page 6-73. Second paragraph (Local Groundwater Management and Monitoring). It appears that the sellers in the Butte sub basins would self regulate for any impacts and respond with mitigation. Does this imply the sellers are monitoring lands and ground water resources outside their jurisdiction and service area? If so, under what authority is that carried out? What relationship does this action have to county permit conditioning and environmental review?

Page 6-142, first paragraph. The proposal to have the selling agency and the EWA Agencies responsible for identifying and mitigating potential third party impacts is not the most effective way to assure impacts are identified and mitigated. The population of the county in some part are the potentially impacted parties. It would seem more prudent and effective to have the county(s) from which the water is transferred participate in the monitoring and determination of impacts. As the 1991 Governor's Drought Water Bank demonstrated, third party impacts are most readily apparent to the agency charged with providing social services (to laborers who lose their jobs as a result of the project).

Page 6-147, first paragraph. We wish to reiterate our concern that the Authors fail to recognize the role of the local County in regulating ground water authority. While the willing seller may have a vested interest in not finding that an impact is significant, it is more likely that the impartial evaluation of the County regulatory body would provide a clearer assessment of relative significance. We do not believe the proposed self identification of impacts by sellers is an effective method to either identify or mitigate impacts. Further, the report fails to explore the opportunities to resolve this matter in a way consistent with County regulatory authority. This mistake is perpetuated in Section 6.2.7.2.3 of the report. Please correct.

In general the report's reliance on sellers to self-regulate potential third party impacts and ground water impacts is overly optimistic. We urge the authors to consider the ramifications of a model for project proponents who will self identify potential impacts, determine significance and mitigate, when the affected resources are not solely within their jurisdiction. This is a major failing of the report.

Page 9-255 through 9-259. This section of the report suggests that the preferred EWA alternative will reduce average annual fish salvage by about 136,000 delta smelt, 1.1 million salmon, 29,000 steel head, 1 million split tail and 9 million striped bass. These numbers are incorrect. Tables 9-56, 9-57, 9-58, 9-59 and 9-60 clearly show that these numbers are total estimated salvage reductions over the complete 15 year modeling period. Therefore the actual approximate average annual reductions in fish salvage are about 9,000 delta smelt, 75,000 salmon, 1,900 steel head, 68,000 split tail and 596,000 striped bass. Please correct.

The above approximate benefits are based on 1979-1993 historical fish salvage, and are likely to be overestimates (Attachment 1, pages A1-60 and A1-61). They estimate the total salvage and not adult equivalent salvage. Because of the high natural mortality of juvenile fish, many salvaged fish would not live to maturity even assuming EWA functioned as hoped. The importance of adult equivalent salvage for striped bass is mentioned in Chapter 9 on page 260, but the issue of adult equivalence is not properly presented. Please correct.

Page 9-127 through 9-249. The detailed analysis of EWA effects upstream from the Delta should be moved to an appropriate appendix. The analyses make it clear that the EWA will produce no significant effects on fish upstream from the Delta. That conclusion should be highlighted early on in the Executive Summary as well as in the discussion of project benefits. The implications of this are significant in terms of EWA strategies to multiply benefits through acquisition strategies. Please clarify.

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Page 11-24, Section 11.2.1

We believe that the description relating to CEQA and NEPA responsibilities are accurate in terms of the minimum required for analysis. However, we are disappointed in the analysis, in that it fails to address the EWA and its potential for redirected significant impacts in the context of the greater CALFED Program. By failing to do so we do not believe the analysis is consistent with the requirements of the Record of Decision.

The purpose of the analysis within this report is to identify significant impacts. By failing to do so on the narrow legal basis of NEPA and CEQA analysis for Socio/Economic consequences is to be inconsistent with the stated "Solution Principles" of the CALFED Bay-Delta Program as defined in the ROD.

*"Have No Significant Redirected Impacts Solutions will not solve problems in the Bay-Delta system by redirecting significant negative impacts, when viewed in their entirety, within the Bay-Delta or other regions of California."*¹⁶

It is impossible for the reader to determine if the CALFED Solution Principle has been violated when the CALFED Agencies privately and collectively choose not to conduct the necessary analysis. This report would have been the logical venue in which to have carried out the referenced analysis.

Is the analysis going to be conducted out in another, perhaps post project venue? Or, alternately have the EWA Agencies reinterpreted the ROD to mean that the Solution Principles mean something else, or nothing at all? Please clarify.

This question also strikes to the very heart of the so-called CALFED assurances, or protections from an inequitable, biased and/or harmful program implementation. We find the absence of the requisite identification within the CALFED Solution Principles of

¹⁶ Record of Decision, CALFED Bay-Delta Program, Programmatic Record of Decision, Volume 1, page 9, August 28, 2000

any “...significant negative impacts...” to be a fatal flaw in the implementation of the program and inconsistent with the Record of Decision.

Page 11-28, Section 11.2.3.1. The specific reference to Water Code Section 1745.05(b) has no bearing on the potential for significant economic impacts that may occur for land fallowing. Rather, it is a threshold for holding a public hearing. The use in the report is a mischaracterization of the law and actually misleads the reader. Please correct.

Page 11-30, Table 11-24. The table underscores the main concern of water transfer source area communities and their political leadership. That is, it is possible to craft a water transfer strategy that is beneficial to some water sellers and to exporters and/or the EWA. However, those transfers, and the economic benefits that do accrue are not the same as those that accrue from agricultural production. The amount of money earned per acre may be the same - to the seller - but the impact of that revenue as part of an economic base income is different. The Table underscores the inequities created by such a situation and the most likely parties to be adversely affect are not the willing sellers.

The third parties not represented in the negotiations, and in this analysis, are local governments, other businesses, laborers and service industries.

The subject report does an injustice to this subject matter by failing to conduct a more detailed analysis of potential third party impacts by narrowly limiting analysis to NEPA/CEQA minimums and ignoring the duty of the EWA Agencies to conduct the analysis necessary to reconcile compliance with the Solution Principles in the CALFED ROD.

Page 11-56, Section 11.2.7.1. We find your analysis of the relative consequences of the Fixed Purchase Alternative a compelling argument, from the perspective of upstream local communities and governments, that this alternative results in fewer impacts and potential adverse consequences to those areas. We strongly recommend that the EWA Agencies implement the Fixed Purchase Alternative, with local mitigation protections as the chosen alternative. We believe that the Flexible Purchase Alternative results in more significant impacts redirected to the source areas which are avoidable by adopting the Fixed Purchase Alternative. Further, the Flexible Purchase Alternative, we believe is inconsistent with the CALFED Solution Principle regarding redirecting “...significant negative impacts.”

Page 11-58, Table 11-43. This table is misleading because it doesn't show comparative likely scenarios for each alternative, but rather looks at each County singly as if accommodating all actions. I would be much more helpful to craft likely scenarios and include them in an accompanying table.

Page 11-59, Table 11-43, Footnote 4. This footnote incorrectly identifies the amount of water to be acquired upstream from the Delta as 50,000 acre feet. The ROD specifically limits that amount to 35,000 acre feet.

Page 12-5, Section 12.1.4. It is unclear if the 20% per county is a cap or if it a matter for consideration along with other land idling. Is the 20% a total (all methods) cap, or just an EWA cap?

Page 12-9, Section 12.2.1. Please refer to our earlier comments on the need for evaluation of this subject to comply with CALFED Solution Principles.

Page 12-11, second paragraph. What is the potential for other programs to be implemented following additional lands within a county (or counties) after multiyear EWA contracts are in place? What is to prevent a county from going over the 20% amount in that circumstance?

Page 12-16, Section 12.2.4. We agree with your findings regarding the lesser impacts of the Fixed Purchase Alternative and support that alternative as a method to easily and simultaneously avoid serious significant impacts to source area communities and local governments and to assure compliance with the CALFED Solution Principles. Comments would be identical on Section 12.2.5.1.

Page 13-20, paragraph 1. This paragraph does not seem to recognize the potential for multiyear contract EWA acquisitions which have previously been identified as an option earlier in the document. Please include an analysis of the potential for multiyear acquisition strategies related to following.

Page 13-20, paragraph 2. Crop idling is recognized as an influence by the report in that it *"...would change the classification to levels less than Prime Farmland..."*. However, later in the same paragraph the mitigation response is *"...the EWA agencies could implement mitigation..."*. CEQA demands a more declarative and concise certainty for mitigation. We suggest that the mitigation measures be identified in the analysis and the proper term would be *"...the EWA agencies, along with local agencies and governments shall implement mitigation as defined..."*. We therefore disagree with your assertion that *"No mitigation is required."*

Page 13-21, Section 13.2.4.3. This section identifies the potential consequences of multiyear acquisitions predicated on crop idling. However, it finds the impacts would be non-significant due to mitigation measures that are not identified within the report. CEQA does not allow the applicant or project proponent to make promises of mitigation and then allow the lead agency(s) to beg off on findings of significance. The impact remains significant until adequately mitigated. Promises are not mitigation. See CEQA Guidelines Section 15126.4(a)(1)(B).

Page 13.2.6.1, Section 13.2.6.1. We agree with your findings regarding the lesser impacts of the Fixed Purchase Alternative and support that alternative as a method to easily and simultaneously avoid serious significant impacts to source area communities and local governments and to assure compliance with the CALFED Solution Principles.

Page 13-25, Section 13.2.7. CEQA requires clear intent on mitigation not that the EWA "...would consider the following measures:". See CEQA Guidelines Section 15126.4(a)(1)(B). Likewise, in the absence of clear mitigation measures we disagree with the unfounded assertion of Section 13.2.8. Absent clear mitigation the impacts are significant. This report contains no clear mitigation definition. Please correct.

Page 16-4, final paragraph. Reclamation First Preference Power Customers (counties of Trinity, Calaveras and Tuolumne) are not identified in reference to preference customers. First Preference customers are unique among Preference customers. Please correct.

Page 16-26 and 16-27. There is not clear identification as to what the EWA actions would have in terms of power availability and cost to Reclamation First Preference Power Customers. Please clarify. Identical comment applies to Section 16.3.9.

Page 22-5, first paragraph. This paragraph is essentially speculation about what may happen regarding projects that are not yet permitted or completed. The statements should be redrafted and tempered with judicious restraint.

Page 22-14, Section 22.2.3. It appears from the discussion in this Section that the Delta "improvements" will probably result in; increased exports from the Delta, increased demands for EWA water to service exporters and an increase in the amount and frequency of EWA purchases. The latter point is key inasmuch as the amount and frequency of EWA purchases, unconstrained by single region acquisition, would mean additional upstream counties would be targeted for purchases. At what point in the CEQA process will full disclosure of these potential impacts be examined?

We assume additional analysis for EWA acquisitions of that magnitude will be examined as part of the South Delta Improvements Project environmental analysis since the two activities appear to be directly linked. Please respond with a detailed explanation of how analysis will be carried out.

Page 22-15, Section 22.3. We wish to dispute the flat statement of the first sentence regarding the effectiveness of mitigation measures. In our previous comments within this letter, we have documented numerous cases in which mitigation measures are unclear, deferred to local sellers of water, or even unidentified. Under such uncertain mitigation strategies it is impossible for the authors, or any other party to reasonably

assert that “Mitigation measures would minimize the potential for EWA acquisitions to significantly contribute to cumulative effects.” We urge you to either clear up the mitigation problems or restate the obvious: that absent a coherent mitigation strategy, impacts are very likely to be significant.

Page 22-15, Section 22.4.1 and 22.4.2. Both of these sections contain assertions of no significant impacts occurring based upon mitigation measures that may be implemented by other agencies. That is not a mitigation measure, it is wishful thinking. Please change to reflect the facts of the situation. Either more specific definitive mitigation or a finding of significance must be provided.

Page 22-19, Section 22.4.8. The mitigation of this section is actually delegated to local agencies and we presume local counties. The EWA doesn’t really implement mitigation measures as much as it depends on the sellers and others to mitigate for its actions. This must be cleared up in the administrative record.

Page 22-19, Section 22.4.9. This section also presumes upon mitigation that is not supported, in sufficient detail to elicit certainty, within the record. Please clarify to more accurately reflect the actual situation.

Appendix E, page 2. Table 1 outlines year 2003 EWA purchase goals. The amounts identified in this table call for greater amounts of acquisitions than what is identified in the CALFED Record of Decision. Under what specific existing authority do the federal agencies have to make such adjustments to the Record of Decision? What public forum or public input and review was offered for input on this decision?

What specific EWA flexibility is actually stated in the ROD and what if any limitations are there on acquisitions?

Are EWA acquisitions simply a following spiral of water transfers from north to south, following in the “wake” of anticipated increased Delta exports?

Is there any anticipated upper limit to this spiral other than the physical capacity of the Delta pumps?

Appendix E, page 4. Reference is made to the need to await the completion of the “...long-term EIS/EIR on the EWA Program.” When was the decision made to extend the EWA into perpetuity? Who made the decision and under what specific authority? This is a key question as it raises the very real prospect of precedent being set in the interim document which is not disclosed except in this appendix.

Appendix E, page 5. Please explain the following sentence with reference to the comment immediately preceding. “Pursue longer-term arrangements as soon as the EIS/

EIR is completed and a decision is made regarding the future of the EWA Program beyond the four-year initial phase."

Appendix E, page 6. "Although an independent CALFED program, the EWA can be viewed as the reoperation of the CVP and SWP to provide protection and enhancement to sensitive fish species of the Bay/Delta Estuary." This sentence appears to be the authors having the best of both worlds with the EWA. It appears, simultaneously to be part of, but independent of the CALFED Bay-Delta Program. "One of the major challenges of the EWA is to coordinate its water purchases with those of other CALFED programs."¹⁷ Could you explain a bit more clearly what exactly EWA is from a strictly administrative and existing authority point of view? Knowing what the project is, or is not, is most helpful in any CEQA action. At times it appears the EWA is part of CALFED. However, the CALFED Bay-Delta Program has not been authorized by the Congress and therefore, the EWA must be being carried out under existing agency authorities - and therefore not part of CALFED. Please clarify per CEQA Guidelines Section 15124 and *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185

Appendix E, Section IV.B. This section identifies additional water as being available upstream of the Delta for acquisition in excess of what is identified in the ROD. That "found" water and its relatively cheap price (compared to south of Delta) is characterized as placing an avoidable cost burden on the EWA. It should be understood that all Area of Origin water needs, north of the Delta, have not been met. To the extent EWA would depend, either in the short term or in the long-term on the same water which is needed for Area of Origin supplies it could be displaced to accommodate upstream needs.

This would be consistent with the intent of the Area of Origin regarding the state and federal projects. We know that EWA water is essentially project water: "...EWA water that is stored in facilities of the CVP and SWP is considered Project water with an EWA label."¹⁸ Truth in labeling points aside, EWA water is by the agencies own admission project water and therefore subject to Area of Origin claims. It is unclear whether the EWA agencies recognize this in their operational strategy.

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Volume 3, page 2-3. The EWA purpose is described to "...provide protection to at-risk native fish species of the Bay-Delta Estuary...". We are not sure that the EWA actually delivers on that purpose.

¹⁷ EWA, EIS/EIR, Vol. II, Appendix E, page 11, July 2003.

¹⁸ EWA, EIS/EIR, Vol. II, Appendix E, page 6, July 2003.

Simply reducing take at the pumps by fractions of 1% does not necessarily translate to increased populations, much less the survival of species. For example, EWA effects on the population level effects of direct mortality (take) of salmon are small. Sheila Greene's (DWR biologist) presentation at a recent Salmon Workshop documents this. According to Sheila, 2002-3 EWA actions reduced the direct mortality to winter run out migrants by 0.014% of the estimated number entering the Delta. In 2001-2, the corresponding number was 0.009% of those entering the Delta and 0.12% of those leaving the Delta (surviving to Chipps Island). In that year, 0.07% of older juvenile salmon leaving the Delta were saved by EWA actions and 0.03% of the fry/smolt. Corresponding numbers in 2000-1 were, for winter run, 0.02% of those entering the Delta, 2.8% of those leaving, for older juveniles, 1.7% of those leaving the Delta, and for fry/smolt, 0.51% of those leaving the Delta. At the same workshop, NOAA Fisheries reported a 20% harvest-related mortality to winter run.

- 3□ Engineers and scientists who have studied the correlation between actions in the Delta and fish populations/survival have concluded that there is considerable uncertainty about fish benefits, particularly when compared to the high cost of EWA resources. Therefore, the question of how the objectives of the project are being achieved vs. the project is a key element of this CEQA analysis. Please see Sections 15124 and Sections 15126.6 (a)(b)(c)(d) and (e).

- 4□ We urge the authors to closely examine the actual benefits of the project objectives and to evaluate that against other alternatives including the Fixed Purchase Alternative and the No Project Alternative. We believe that either of these two alternatives would provide equal benefits (in terms of stated project objectives) with fewer redirected impacts to the upstream communities, environments and local governments.

END